

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

PLATFORM SOLUTIONS, INC. and T3
TECHNOLOGIES, INC.,

Defendant.

Civil Action No. 06-cv-13565-LAK (THK)

**DECLARATION OF RYAN C.
KIRKPATRICK IN SUPPORT OF
PLATFORM SOLUTION, INC.'S
MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL MEMORANDUM OF
LAW AND SUPPLEMENTAL
MEMORANDUM OF LAW**

**[PUBLIC VERSION – REDACTED – ALL
EXHIBITS FILED UNDER SEAL]**

I, RYAN C. KIRKPATRICK, declare as follows:

1. I am an attorney with the law firm of Susman Godfrey L.L.P., and counsel for Platform Solutions, Inc. ("PSI"), in the above-captioned action. I am a member in good standing of the bar of the state of California and have been admitted *pro hac vice* in the above-captioned matter. I am over the age of eighteen, attest to the following matters from personal knowledge, and if called as a witness, could competently testify to the matters set forth herein. I submit this declaration in support of PSI's Motion for Leave to File a Supplemental Memorandum of Law, and PSI's Supplemental Memorandum of Law.

2. Attached as Exhibit 1 is a true and correct copy of Fundamental Software, Inc.'s ("FSI") Objections and Responses to February 20, 2008 Subpoena for Documents Propounded by PSI.

3. Attached as Exhibit 2 is a true and correct copy of the cover letter accompanying FSI's May 22, 2008 production of documents in response to PSI's February 20, 2008 subpoena, which states that FSI "verified that [the documents] were true and correct copies of documents as maintained by FSI."

4. Attached as Exhibit 3 is a true and correct copy of IBM's First Responses to PSI's Third Set of Interrogatories (Nos. 26-27).

5. Attached as Exhibit 4 is a true and correct copy of IBM's Responses to PSI's Requests for Admission Nos. 136-138.

6. Attached as Exhibit 5 is a true and correct copy of a printout from Hercules' website entitled "Hercules Version 3: Frequently Asked Questions", which was downloaded on June 9, 2008.

7. Attached as Exhibit 6 is a true and correct copy of IBMPSI10073297-8, which was produced by IBM in this action.

8. Attached as Exhibit 7 is a true and correct copy of IBMPSI11487525-26, which was produced by IBM in this action on May 2, 2008.

9. Attached as Exhibit 8 is a true and correct copy of IBMPSI11487795-96, which was produced by IBM in this action on May 2, 2008.

10. Attached as Exhibit 9 is a true and correct copy of IBMPSI03893509-27, which was produced by IBM in this action.

11. Attached as Exhibit 10 is a true and correct copy of IBMPSI03993644-52, which was produced by IBM in this action.

12. Attached as Exhibits 11 through 81 are true and correct copies of documents produced by FSI on May 22, 2008 in response to the Rule 45 subpoena issued by PSI on February 20, 2008.

[REDACTED]

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signed this 10th day of June, 2008, in Los Angeles, California.

/s/ Ryan C. Kirkpatrick
Ryan C. Kirkpatrick